



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, SEATTLE DISTRICT
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

Regulatory Branch

May 27, 2021

Ms. Holly Blake
Shoalwater Bay Indian Tribe
Post Office Box 130
Tokeland, Washington 98590

Reference: NWS-2020-467
Shoalwater Bay Indian
Tribe (Ghost Dike Advance
Mitigation Project)

Dear Ms. Blake:

We have reviewed your application to re-establish and rehabilitate 20.32 acres of estuarine wetland to construct an advance wetland mitigation project and establish credits for future impacts from Tribally-sponsored development near Tokeland, Pacific County, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities (Federal Register January 6, 2017, Vol. 82, No. 4) authorizes your proposal as depicted on the enclosed drawings dated February 2020, provided you implement the mitigation plan entitled *Shoalwater Bay Indian Tribe Ghost Dike Advance Mitigation Project*, dated March 2021.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 27, Terms and Conditions* and the following special conditions:

a. In order to meet the requirements of the Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) programmatic consultation Fish Passage and Restoration Actions in Washington State (FPRP III) (National Marine Fisheries Service (NMFS) Reference Number WCRO-2014-00004), you must implement and abide by the ESA requirements and/or agreements set forth in the Biological Opinion (BO) dated June 21, 2017, and the Project Information Form dated July 6, 2020 in the enclosed document Appendix A: FPRP III Guidelines and Implementation Forms (NMFS Reference Number WCRO-2014-00004-2078). The BO is available on the U.S. Army Corps of Engineers (Corps) website (Permit Guidebook, Endangered Species, Programmatic Consultations, Fish Passage and Restoration Programmatic Consultations). Within 45 days of completing the permitted work in

waters of the U.S., you must provide the Corps the information requested in the FPRP Action Completion Reporting Form in the enclosed document Appendix A: FPRP III Guidelines and Implementation Forms. If fish salvage occurs as part of your project, you must also provide the Corps the information requested in the FPRP Fish Salvage Reporting Form in the enclosed document Appendix A: FPRP III Guidelines and Implementation Forms, within 45 days of completing the permitted work in waters of the U.S. All information must prominently display the reference number NWS-2020-467. Failure to comply with these requirements constitutes non-compliance with the ESA and your Corps permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of their BO and with the ESA. If you cannot comply with the terms and conditions of this programmatic consultation, you must, prior to commencing construction, contact the Corps, Seattle District, Regulatory Branch for an individual consultation in accordance with the requirements of the ESA and/or the MSA.

b. You must implement and abide by the Endangered Species Act (ESA) requirements and/or agreements set forth in the Biological Evaluation for Informal ESA Consultation for Shoalwater Bay Indian Tribe Ghost Dike Advanced Mitigation Project dated May 11, 2020, in its entirety. The U.S. Fish and Wildlife Service (USFWS) provided the enclosed LOC with a finding of “may affect, not likely to adversely affect” based on this document on November 5, 2020 (USFWS Reference Number 01EWF00-2020-I-I343). The USFWS will be informed of this permit issuance. Failure to comply with the commitments made in this consultation constitutes non-compliance with the ESA and your U.S. Army Corps of Engineers permit. The USFWS is the appropriate authority to determine compliance with ESA.

c. In order to meet the requirements of the Endangered Species Act you may conduct the authorized in-water activities during the period from August 1 through October 15 in any year this permit is valid. You shall not conduct any in-water work authorized by this permit during the period from October 16 through July 31 in any year this permit is valid.

d. You shall implement and abide by the mitigation plan, entitled *Shoalwater Bay Indian Tribe Ghost Dike Advance Mitigation Project*, dated March 2021.

e. A status report on the implementation of the authorized project shall be submitted annually to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch (Corps) by December 31st each year until mitigation construction is complete as determined by the Corps. This report must prominently display the reference number NWS-2020-467.

f. An as-built mitigation construction report and as-built drawings of the mitigation area shall be submitted upon completion of mitigation construction, in lieu of the status report described in Special Condition “b.” This report must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch (Corps) for review and approval and must

prominently display the reference number NWS-2020-467. The year mitigation construction is completed, as determined by the Corps, represents Year 0 for mitigation monitoring.

g. Mitigation monitoring reports shall be submitted annually for monitoring years 1, 2, 3, 5, 7, and 10 to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch (Corps) by December 31 of each monitoring year. Year 1 monitoring will occur at least one year after completion of the mitigation site as determined by the Corps. All reports must prominently display the reference number NWS-2020-467.

h. A delineation using the currently approved federal wetland delineation manual and appropriate regional supplement must be included with the Year 5 and the Year 10 monitoring reports and shall include all mitigation areas. If a performance standard requires increasing the rating category, the wetlands must be evaluated using the most current version of the Washington State Wetlands Rating System for Western.

i. You shall submit a proposed legal instrument that will further ensure the long-term protection of the Ghost Dike Advance Mitigation Site to the Corps and Ecology for their review and approval prior to implementation. The approved site protection instrument must be implemented prior to use of advanced credits.

j. Your responsibility to complete the required compensatory mitigation as set forth in Special Conditions “d” through “i” will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined this project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

Please be reminded that Special Condition “a” of your permit requires that you implement and abide by the Endangered Species Act (ESA) requirements set forth in the programmatic Biological Opinion (BO) for this project.

Please note that National General Condition 21, *Discovery of Previously Unknown Remains and Artifacts*, found in the *Nationwide Permit Terms and Conditions* enclosure, details procedures that must be followed should an inadvertent discovery occur. You must ensure that you comply with this condition during the construction of your project.

A conditioned Water Quality Certification (WQC) has been issued by the Washington State Department of Ecology for your project. You must comply with the conditions specified in the enclosed WQC.

You have not requested a jurisdictional determination for this proposed project. If you believe the U.S. Army Corps of Engineers does not have jurisdiction over all or portions of your project you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

Our verification of this 2017 NWP authorization is valid until March 18, 2022, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work for the 2017 NWP authorization has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2022, you will have until March 18, 2023, to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. All compliance reports should be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch electronically at nws.compliance@usace.army.mil. Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey. Referenced documents and information about our program are available on our website at www.nws.usace.army.mil, select "Regulatory Permit Information". A copy of this letter with enclosures will be furnished to Mr. Brent Haddaway at bhaddaway@cascadeenv.com. If you have any questions, please contact me at Amanda.N.Nadjkovic@usace.army.mil or (206) 316-3156.

Sincerely,

A handwritten signature in black ink that reads "Amanda Nadjkovic". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Amanda Nadjkovic, Project Manager
Regulatory Branch

Enclosures